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# In the Supreme Court of the United States

**OCTOBER TERM, 1970**

**NO. 113**

HONORABLE BERNARD M. DECKER,
UNITED STATES DISTRICT JUDGE, ET AL.,
*Petitioners,*

vs.

HARPER & ROW, PUBLISHERS, INC., ET AL.,
*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## MOTION OF THE NORTHAMPTON COUNTY, PENNSYLVANIA, BAR ASSOCIATION FOR LEAVE TO JOIN IN THE BRIEF OF THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE

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The Northampton County, Pennsylvania, Bar Association (the Northampton Association) respectfully moves for leave to join in the brief of the American Bar Association as *amicus curiae*. The respondents and the American Bar Association, as *amicus curiae*, have consented to the action of the Northampton Association; the consent of the petitioners was not requested since such consent has been withheld in other instances.

The Northampton Association is headquartered in Easton, Pennsylvania, the county seat of Northampton County, which includes the City of Easton, a portion of the City of Bethlehem and numerous small communities. The Northampton Association has more than 150 attorneys as members.

The Northampton Association believes that all corporate employees should be entitled to the benefit of advice of counsel on matters arising out of their employment and therefore urges affirmance of the decision reached by the Court of Appeals for the Seventh Circuit in reversing the District Court's finding in *Decker v. Harper & Row Publishers, Inc.* that the attorney-client privilege should be limited to the so-called "control group" employees constituting the higher echelon of corporate management.

Employees of corporations require legal advice both in their capacity as corporate employees and as individuals. Most corporations demand compliance by employees with Federal and state laws as well as administrative regulations. Federal and state laws cover the gamut of corporate operations ranging from laws and regulations affecting environmental controls to antitrust procedures to standards for hiring and promotion of employees. In order to comply with those laws, an interpretation of them, particularly as they may relate to a proposed course of conduct, often requires legal guidance. In today's complex society, without legal guidance an employee would be in a maze.

The Northampton Association's experience indicates that employees who might not be considered "control group" members frequently are in greater need of legal advice than those who would clearly qualify as within the "control group". In many cases, such employees lack sophistication in handling complex corporate legal problems. In order to protect themselves and their corporate employers, those employees should be encouraged to seek, or at least not be discouraged from seeking, legal advice and counsel.

In order to be in a position to render competent advice, it is important for the attorney to be aware of all pertinent circumstances. One of the matters of greatest concern to members of the practicing bar is the failure of a client, generally because of inadvertence or ignorance, to "tell the whole story". A corporate lawyer frequently is required to examine an employee at some length regarding his conduct and as to the factors which bear upon the course of conduct proposed or chosen. Proper defense in those areas where criminal

conduct might possibly be involved makes it imperative that the lawyer have complete information. One of the important reasons behind the recognition of the attorney-client privilege has been to encourage full disclosure by the client. There is no reason to discriminate against corporate employees in the application of the attorney-client privilege.

The laws of the Commonwealth of Pennsylvania specifically recognize the attorney-client privilege. Under the heading "Confidential communications to attorney" the Criminal Procedure Act of Pennsylvania provides:

> "Nor shall counsel be competent or permitted to testify to confidential communications made to him by his client, or the client be compelled to disclose the same, unless in either case this privilege be waived upon the trial by the client." 19 Purdon's Penna. Statutes Annotated 686.

The importance and sanctity of the attorney-client privilege in Pennsylvania have been so widely accepted that there have been very few court decisions interpreting it and none questioning it.

Since most business today is carried on through the corporate form by corporate employees, it is important to preserve to the fullest measure the applicability of the attorney-client privilege for corporate employees.

WHEREFORE, the Northampton Association prays that it be granted leave to join in the brief of the American Bar Association as *amicus curiae*.

Respectfully submitted,

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